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Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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The inalienable right to develop research, production and uses of nuclear energy for peaceful purposes

Working paper submitted by the Islamic Republic of Iran

1. In order to establish a balance between security concerns and the socioeconomic requirements for development, especially for developing countries, article IV of the Treaty on the Non-Proliferation of Nuclear Weapons guarantees "the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty" and provides for an undertaking by all the parties to the Treaty "to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy". Article IV also plays a crucial role as the main incentive set forth to encourage the non-nuclear-weapon States to join the Treaty and thereby foster the non-proliferation regime.

2. This main pillar of the Treaty has been underscored in the light of the increasing need of the world for nuclear energy in the third millennium. We have recently witnessed this promising trend in our region. The Islamic Republic of Iran welcomes the initiatives of its brotherly neighbours to move towards the peaceful application of nuclear energy. This trend confirms once again the long-standing position of the Islamic Republic of Iran concerning the need to diversify energy resources in order to guarantee its future requirements.

3. The inalienable right of all States parties to nuclear technology for peaceful purposes without discrimination indeed constitutes the very foundation of the Treaty. This inalienable right in itself emanates from two broader propositions. First, scientific and technological achievements are the common heritage of humanity, and second, the requisite balance between rights and obligations is the basis of any sound legal instrument. This balance guarantees the longevity of the legal regime by providing incentives for membership and compliance.

4. Article III, while providing for the undertaking by each non-nuclear-weapon State party to the Treaty to conclude safeguards agreements with the International Atomic Energy Agency (IAEA), is equally explicit in articulating that the implementation of such safeguards shall be "in a manner designed to comply with

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Article IV of this Treaty, and to avoid hampering the economic or technological development of the Parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this Article and the principle of safeguarding set forth in the Preamble of the Treaty."

5. This notion was duly noted in the Review Conferences of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, particularly in the Final Document of the 2000 Review Conference when considering that "the strengthening of IAEA safeguards should not adversely affect the resources available for technical assistance and cooperation. The allocation of resources should take into account all of the Agency's statutory functions, including that of encouraging and assisting the development and practical application of atomic energy for peaceful uses with adequate technology transfer."

6. Given the importance of the peaceful applications of nuclear energy and nuclear technologies for human health, medical, industrial, agriculture, environmental protection and sustainable development, especially in developing countries, the statute of IAEA recognizes its role in encouraging and assisting "research on, and development and practical application of, atomic energy for peaceful uses throughout the world" and fostering "the exchange of scientific and technical information on peaceful uses of atomic energy".

7. The attempts, including through the involvement of the Security Council, to turn confidence-building measures into mandatory ones, are a matter of grave concern. Such actions, which are in full contravention of article IV of the Treaty, violate the inalienable right of States parties to use nuclear energy for peaceful purposes. In fact, by adopting such actions, the balance of rights and obligations of States parties would be disturbed, the existing discrimination and gap between the haves and have-nots in the Treaty would be widened and, finally, the very basis of the fundamental bargain of the Treaty would be destroyed.

8. Furthermore, the fundamental role of IAEA in the promotion of nuclear energy for peaceful purposes has been increasingly undermined by shortcomings in resources and restrictions imposed by some States on the Agency. Since the establishment of IAEA, developing countries have continually expressed serious concerns about the policy for funding technical cooperation, based on voluntary contributions that are unpredictable, unsecured and subject to the political motivations of the donors. Safeguards activities are, however, funded from the regular budget. Such a discriminatory policy with respect to two pillars of the statute of the Agency and the Treaty has to be abandoned. In accordance with actions 53 and 54 of the conclusions and recommendations for follow-on actions contained in the Final Document of the 2010 Review Conference, States parties are called upon to strengthen the IAEA technical cooperation programme by assisting developing States parties in taking practical steps to ensure that IAEA resources in this area are sufficient, assured and predictable.

9. Moreover, measures taken by States parties to prevent nuclear proliferation should facilitate rather than hamper the exercise of the recognized rights of developing States parties to the Treaty to peaceful applications of nuclear energy. Imposition of restrictions as a cover for the implementation of the foreign policy

objectives of certain States is a clear violation of article IV obligations, and challenges both the integrity and credibility of the Treaty.

10. Consistent with action 51 of the conclusions and recommendations for follow-on actions of the Final Document of the 2010 Review Conference, undue restrictions on the transfer of nuclear materials, equipment and technologies for the peaceful uses of nuclear energy should be swiftly removed. Bilateral and multilateral cooperation among States parties to the Treaty under the supervision of IAEA on the peaceful uses of nuclear energy should never be restricted or confined, either by other States or by ad hoc export control regimes, such as the Nuclear Suppliers Group, the exclusive and non-transparent group that claims to have been established to strengthen the non-proliferation regime. The application of unilaterally enforced export control regimes, in contravention of the letter and the spirit of the Treaty, has hampered the access of developing countries to nuclear materials, equipment and technologies for peaceful purposes. It is essential to note the fact that, in the statute of the Agency and the Treaty, as well as in the comprehensive safeguards agreement and even the most intrusive, but voluntary, instrument, that is, the additional protocol to the comprehensive safeguards agreement, there is no provision to prohibit or restrict enrichment and reprocessing activities. The function of the Agency is merely to verify the declarations of member States.

11. In this context, the decision of the Nuclear Suppliers Group on nuclear cooperation with a non-party has severely damaged the Treaty. The decision of the Group is a clear violation of article III (2), which stipulates that each State party to the Treaty should undertake not to provide equipment or material for peaceful purposes "unless the source or special fissionable material shall be subject to the safeguards required by" the Treaty.

12. The aforementioned decision, which has been taken under pressure by the United States of America, is also a violation of the commitment of the nuclear-weapon States under the 1995 decision on principles and objectives for nuclear non-proliferation and disarmament and the Final Document of the 2000 Review Conference to promote the universality of the Treaty. Such a decision is another manifestation of double standards and discrimination in implementing the provisions of the Treaty. The Review Conference and its preparatory committees need to address this very important issue.

13. Measures need to be taken to ensure that the inalienable rights of all States parties under the provisions of the preamble and articles of the Treaty are all fully protected. No State party should be limited in exercising its rights under the Treaty based on allegations of non-compliance. The inalienable rights of the States parties, as stipulated in the Treaty, cover all aspects of peaceful technologies and are not limited to specific areas. In this connection, the outcome documents of the 2000 and 2010 Review Conferences have reiterated that each country's choices and decisions in the field of the peaceful uses of nuclear energy should be respected without jeopardizing its policies or international cooperation agreements and arrangements for the peaceful uses of nuclear energy and its fuel-cycle policies. Unfortunately, for the first time in the history of IAEA, the promotional statutory pillar of the statute has been put in serious jeopardy through politically motivated decisions of the Security Council, which is trying to dictate to the Agency whether, how and when to deprive a developing member State of technical cooperation that is solely intended for humanitarian and peaceful uses. The authority of IAEA as the sole competent

technical international organization in respect of this issue has been seriously undermined. We strongly believe that there should be a balance between the promotional and safeguards activities of IAEA, and IAEA should not be turned into a one-dimensional agency.

14. It should be once again reiterated that arbitrary and self-serving criteria and thresholds regarding proliferation-proof and proliferation-prone technologies can and will only undermine the Treaty. The Islamic Republic of Iran, for its part, is determined to pursue all areas of nuclear technology, including fuel cycle and enrichment technology, exclusively for peaceful purposes. However, no one should be under the illusion that guarantees can theoretically or practically amount to cessation, or even suspension, of a legal activity that has been and will continue to be carried out under the fullest and most intrusive IAEA supervision.

15. The Islamic Republic of Iran is of the view that, in order to strengthen the effectiveness and credibility of the Treaty and to put an end to the selective and discriminatory implementation of the articles of the Treaty, the 2015 Review Conference should intensify its work in order to prevent further non-compliance of developed States parties with undertakings under article IV. To ensure the adoption of tangible measures to promote the implementation of the inalienable rights of all States parties, particularly developing countries, to enjoy their established rights under the Treaty and to have full access to nuclear materials, technologies, equipment and scientific and technological information for peaceful purposes and, in doing so, preserve the delicate balance between the rights and obligations arising from the Treaty, any new division among the States parties and interpretations incompatible with the letter of the Treaty should be strictly avoided.

16. According to article IV of the Treaty, nothing in the Treaty shall be interpreted as affecting the inalienable right of all the parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with articles I and II of the Treaty.

17. It also stipulates that all the parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also cooperate in contributing alone, or together with other States or international organizations, to the further development of applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States parties to the Treaty, with due consideration for the needs of the developing areas of the world.

18. The safeguards required by article III shall also be implemented in a manner designed to comply with article IV of the Treaty and to avoid hampering the economic or technological development of the parties or international cooperation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes, in accordance with the provisions of article III and the principle of safeguarding set forth in the preamble of the Treaty.

19. The recent proposals and decisions on limitations or restrictions on the inalienable right of States parties to develop a national fuel cycle are a matter of serious concern. In this regard, the 2015 Review Conference should reaffirm this right and decide that any explicit or implicit decision or act that is intended to

hamper the nuclear policies of States parties to develop a national fuel cycle shall be avoided.

20. On the other hand, certain countries have used the Board of Governors of IAEA and the Security Council as tools for advancing their political intentions and to interrupt the peaceful activities of a State party.

21. To this end, they may commit numerous breaches of their obligations, which can in turn result in the infliction of damages on a State party. Some of the breaches and consequential damages are as follows:

(a) Imposing unnecessary costs on the Agency;

(b) Violation of article IV of the Treaty by hampering the peaceful nuclear activities of a State party;

(c) Interrupting peaceful nuclear activities of a State party through extensive inspections and releasing confidential information (the continued presence of the inspectors in nuclear facilities can hinder the scientists and the personnel of the facilities from doing their jobs in a tranquil environment, while the safeguards shall be implemented in a manner to avoid undue interference in a State party's peaceful nuclear activities and in particular in the operation of facilities);

(d) Imposing measures beyond the boundaries of existing legal commitments of a State party, including suspension of peaceful nuclear activities, which can cause many human, financial and political damages;

(e) Breach of article XI of the statute of IAEA on facilitating technical cooperation projects;

(f) Involving the Security Council unlawfully;

(g) Interrupting the technical cooperation of the Agency with a State party, while the raison d'être of the Agency is to help the member States in this field;

(h) Damage to the prestige of the Agency;

(i) Intellectual damages, particularly damage to the reputation of a State party.

22. Given the above-mentioned points, the question arises as to who should compensate for these damages and how the compensation should be made.

23. Owing to the importance of the issue, and since no mechanism is designed under the Treaty in this regard, the Islamic Republic of Iran proposes the establishment of a mechanism by the 2015 Review Conference to examine cases of non-compliance with article IV and the consequential damages inflicted on States parties through the violation of this article by any State party.

24. In such a mechanism, the implementation of the provisions of article IV and compliance with the obligations of the nuclear technology owners, including the facilitation of international cooperation, should be duly verified, and those countries that are responsible for the violation of article IV should compensate for the damages inflicted on States parties resulting from their actions.